view,[10] — the result attained by the court obviously follows from the *res judicata* theory. A man cannot be bound by the judgment in a suit not yet begun. The same result follows from a strict application of the notice theory, to which the court leaned. But if a broad view of notice be taken, the very existence of the original suit might well be enough to put the purchaser on inquiry and hence bring him within the judgment on the cross-bill. But such a result seems neither just nor desirable.

THE CONSTITUTIONAL RIGHT TO A PUBLIC TRIAL. — Publicity seems to have been an incident of the common law trial by jury,[1] and hence a constitutional guaranty of trial by jury might well have been construed as a guaranty that the trial should be public. However, very generally our constitutions expressly stipulate that one accused of crime shall be accorded a public trial. The opportunities offered for discovering new testimony, the wholesome effect on witnesses, jurors, and officers of the court, and, running through all, the confidence of the community that it knows or can learn what the courts are doing, have been obvious advantages of allowing the public free access to the trial rooms.[2] On the other hand, such publicity permits spectators to subject themselves to the influences of obscene and vicious testimony.[3] The latter consideration has led to a conflict between the necessity of observing the constitutional limitation and the desire to guard the public morals. More or less complete exclusion of spectators during the recital of obscene testimony has been sustained on the ground that it was necessary to preserve order,[4] to prevent embarrassment of the witness,[5] or to maintain the dignity of the court.[6] But the dignity and decorum of the court proceeding must not be more highly regarded than an express constitutional provision. Nor have summary proceedings for contempt proved entirely inadequate to maintain order.[7] It is evident that the principal object in sustaining such exclusion was to protect the public morals. The courts looked rather at the benefit to the persons excluded than at those necessities of the trial to assure which the constitutional provision was aimed. The current of authority at first seemed to allow practical exclusion,[8] but a recent Ohio decision, holding illegal a conviction on a trial from which all were excluded except the necessary parties to the trial, members of the bar, and newspaper men, marks a trend of authority[9] the other way. *State* v. *Hensley*, 79 N. E. Rep. 462.

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[10] Mansur, etc., Co. *v.* Beer, 19 Tex. Civ. App. 311. See 2 Pomeroy, Eq. Jurisp., § 634. *Contra*, Hall Lumber Co. *v.* Gustin, 54 Mich. 624.

[1] Daubney *v.* Cooper, 10 B. & C. 237. See Lilburne's Trial, 4 How. St. Tr. 1273; Fortescue, De Laudibus Legum Angliæ, Amos' ed., 100; 3 Bl. Comm. 373.

[2] See 3 Wig., Ev., §§ 1834–1836; 6 Works of Bentham, Bowring's ed., 351.

[3] See Cooley, Const. Lim., 7 ed., 441; Beale, Crim. Plead. and Prac., § 257.

[4] Lide *v.* State, 133 Ala. 43, 63.

[5] Grimmett *v.* State, 22 Tex. App. 36.

[6] People *v.* Kerrigan, 73 Cal. 222.

[7] See 2 Bishop, Crim. Law, 8 ed., § 252.

[8] State *v.* Brooks, 92 Mo. 542; Grimmett *v.* State, *supra*; People *v.* Kerrigan, *supra*; State *v.* Callahan, 110 N. W. Rep. 342 (Minn.).

[9] People *v.* Murray, 89 Mich. 276; People *v.* Hartman, 103 Cal. 242 (but *cf.* People *v.* Tarbox, 115 Cal. 57); People *v.* Yeager, 113 Mich. 228. See Peadon *v.* State, 46 Fla. 124, 128.

The question remains as to the degree of control the court may exercise over spectators at a trial without infringing the constitutional requirement. It is doubtless the duty of the court to prevent the admission of so many persons as will physically obstruct the efficient administration of the proceeding.[10] Provided that the court-room has been selected with a view to the reasonable accommodation of the public, it would seem that the attendance could be limited to the seating capacity of the room. But it is conceived that a public trial means more than one which will give the protection of publicity to the trial itself. The traditional idea of the open court is that of one to which the citizen could freely go. Accordingly, the not uncommon practice of locking the doors during the examination of each witness would almost seem a violation of the provision.[11] It would seem also that the plan of admission by tickets good for limited periods would necessarily be objectionable to this interpretation of the provision, besides offering a ready opportunity for improper exclusion.[12] The results of an open court, however, are less uniformly desirable under modern conditions. It is worthy of note that the constitutions of a few states do not expressly provide for a public trial,[13] and that in at least one of these states a statute provides that the trial of certain offenses be held behind closed doors.[14]

License Fees and Franchise Taxes. — It often becomes necessary to decide whether a so-called license fee is in reality a license, or must be regarded as a tax. It is established that a condition precedent to regarding the imposition as a license is that some privilege be conferred which it was within the power of the state to withhold.[1] Some courts maintain that even so the assessment cannot be regarded as a license if it is more than sufficient to compensate for the cost of issuing the license and of the necessary control over the business.[2] Other jurisdictions take the opposite view and hold that, so long as a privilege is conferred, it makes no difference how far the return to the state exceeds the cost.[3] Still other courts, though ordinarily recognizing the first view, make a distinction in the case of occupations that are not regarded as useful or beneficial, and here the levy is regarded as a license, though the bare cost to the state may be exceeded.[4] A further modification of the first view is that the incidental expenses incurred by the state because of the granting of the license may be taken into consideration ; and under this head would be included the expenses consequent upon increased police service necessitated by the granting of a right to sell liquor.[5] It is hard to tell, under this reasoning, where to draw the line, for one might keep on finding incidental consequences indefinitely.

It is, in fact, impossible to lay down any hard and fast rule. The nature

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10 Myers *v.* State, 97 Ga. 76, 99.
11 But see Stone *v.* People, 3 Ill. 326.
12 *Contra,* Jackson *v.* Com., 100 Ky. 239.
13 Massachusetts, New York.
14 People *v.* Hall, 51 N. Y. App. Div. 57.

1 N. Hudson Co. Ry. Co. *v.* Hoboken, 41 N. J. L. 71; Chilvers *v.* People, 11 Mich. 43.
2 People *v.* Jarvis, 19 N. Y. App. Div. 466; State *v.* Angelo, 71 N. H. 224.
3 State *v.* Bixman, 162 Mo. 1,
4 See State *v.* Bean, 91 N. C. 554, 559.
5 Cooley, Taxation, 3 ed., 1142.